

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

**Revision of the Commission's Rules to
Ensure Compatibility with Enhanced 911
Emergency Calling Systems**

CC Docket No. 94-102

To: The Wireless Telecommunications Bureau

REQUEST FOR LIMITED WAIVER

North Dakota PCS Alliance ("Alliance"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules, hereby requests a limited waiver of the June 30, 2002, deadline by which digital wireless systems must be capable of transmitting 911 calls from Text Telephone Devices ("TTY"). This requirement was imposed by the *Fourth Report and Order* in the above-captioned docket and Section 20.18(c) of the Commission's Rules.¹ In particular, the Alliance is seeking an extension of six months (*i.e.*, until December 31, 2002) in order to permit its switching provider to perform necessary upgrades and to implement a new wireless switch that will allow TTY capability.

I. BACKGROUND

The Alliance is a qualified small business consortium and the holder of a broadband PCS F-Block license under Call Sign KNLH236 in the Williston, North Dakota BTA (Market B476). We initiated service on this system in April of 2002 and we have successfully met our five-year

¹ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fourth Report and Order*, CC Docket No. 94-102, 15 FCC Rcd 25216 (2000); Section 20.18(c) of the Rules provides that "Licensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, *e.g.*, through the use of Text Telephone Devices (TTY). 47 C.F.R. § 20.18 (c).

buildout requirement.² Our network utilizes CDMA base station equipment and we have entered into an agreement to obtain switching services from North Dakota Network Company (“NDNC”). This agreement is part of a larger transaction which contemplates the eventual assignment of our F-Block license to NDNC, subject to prior FCC approval.³ However, because TTY is a switch-based function, we are dependent on NDNC to make TTY capability available on the Alliance network. In turn, NDNC is dependent upon its switch vendor (Nortel) for the provision and installation of software necessary to process 911 calls originating from TTY devices.

According to NDNC, Nortel has made a business decision to discontinue support for the DMS-100 Dual Load switch utilized by NDNC and the Alliance. As a result, NDNC has informed us that the necessary software to make our network accessible to TTY/TDD devices is not available from Nortel, and NDNC is being forced to purchase and install a new wireless switch in order to implement TTY capability. Further details regarding NDNC’s efforts to upgrade its Dual Load switch can be found in their request for limited waiver of the TTY implementation deadline⁴ as well as a recent TTY implementation report filed by NDNC.⁵

II. GOOD CAUSE EXISTS FOR WAIVER OF THE JUNE 30, 2002 DEADLINE

Good cause exists for the FCC to grant the Alliance’s request for a limited waiver of the June 30, 2002 TTY compliance deadline.⁶ Good cause is shown and waiver of a rule is

² See FCC Form 601 Required Notification, FCC File No. 0000868102, *filed* April 29, 2002.

³ The Alliance is currently seeking FCC approval to assign its license for Station KNLH236 to North Dakota Network Company. See FCC File No. 0000916174, *filed* June 18, 2002.

⁴ See Request for Limited Waiver, CC Docket 94-102, *filed* June 28, 2002.

⁵ See Quarterly TTY Implementation Report of North Dakota Network Co, CC Docket No. 94-102, *filed* July 15, 2002.

⁶ The Commission may grant an extension or waiver of a compliance deadline for good cause shown. See 47 C.F.R. § 1.3.

appropriate if “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”⁷ Similarly, under the Commission’s rules governing Wireless Radio Services, the Commission may grant a waiver if, in view of unique or unusual factual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁸ The Commission has consistently concluded that waiver of a regulatory deadline is appropriate when non-compliance “is due to circumstances beyond the licensee’s control.”⁹ Moreover, in the context of other Section 20.18 regulations governing deployment of 911 location identification capabilities, the Commission has specifically recognized that “technology-related issues” delaying implementation could warrant grant of a waiver to allow for their resolution.¹⁰

In the Alliance’s case, special circumstances exist because the necessary software to provide TTY capability on its network is not commercially available, and its switching provider needs additional time to obtain a new wireless switch from its vendor and to install and test the appropriate TTY software upgrades. It is important to note that the Alliance is not requesting an open-ended extension, but instead intends to promptly achieve compliance within a reasonable period after the original deadline. Strict enforcement of the TTY compliance deadline in this instance would be inequitable and especially burdensome on a small carrier such as the Alliance,

⁷ Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also* WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir 1969).

⁸ *See* 47 C.F.R. § 1.925(b)(3).

⁹ *E.g., Order, McElroy Electronics Corp.; Request for Clarification of Commission Rules Regarding Section 22.911(a) in Relation to Construction of Cellular System for Market No. 15-A2*, 13 FCC Rcd. 7291, 7295, ¶ 8 (WTB 1998).

¹⁰ *See Fourth Memorandum Opinion and Order, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, FCC 00-326, 15 FCC Rcd. 17442, 17459, ¶ 43 (2000) (“In the case of E911, we have recognized that there could be instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible by October 1, 2001, and indicated that these cases could be dealt with through individual waivers as these implementation issues are more precisely identified.”).

because it lacks the resources and market power that larger carriers can use to influence vendor delivery schedules and to participate in technology development and beta testing programs.

Finally, the underlying purpose of Section 20.18(c) – “requiring carriers to achieve TTY/digital compatibility at the earliest possible date”¹¹ – would be frustrated by strict enforcement of the rule’s June 30, 2002 deadline in Alliance’s case. The FCC has already suspended and waived the compliance deadline as to digital wireless carriers for more than three years “because the technology did not exist to enable TTY signals to be transmitted over digital wireless systems at the time the rule was originally implemented.”¹² When it became apparent that the wireless industry and representatives of the disability community had developed solutions for nearly all air interfaces, the FCC adopted a two-stage deadline where carriers were to have obtained all software upgrades and equipment necessary for their systems to be capable of transmitting 911 calls from TTY devices by December 31, 2001, and “an additional six-month period (until June 30, 2002) to integrate, test, and deploy the technology in their systems in conjunction with the public safety community.”¹³ Enforcing a strict deadline against the Alliance when the necessary hardware and software upgrades for TTY capability on its network are not available to its switch provider would defeat the whole purpose of the rule. Both the Alliance and NDNC require the assistance and cooperation of Nortel to achieve compliance. According to NDNC, such assistance and cooperation from Nortel, while promised, has been slow in coming. In this context, the Alliance submits that application of the June 30, 2002 deadline to it would be contrary to the public interest and unduly burdensome and respectfully

¹¹ *Fourth Report and Order* at ¶ 29.

¹² *Id.* at ¶ 7.

¹³ *Id.* at ¶ 8.

requests an additional six months, until December 31, 2002, to come into compliance with Section 20.18(c) of the Commission's Rules.

Moreover, the Alliance has no reasonable alternative other than to wait for Nortel to provide NDNC with a new switch. Our system is completely based on Nortel infrastructure and will become part of NDNC's broadband PCS network upon FCC approval and consummation of the proposed assignment of license¹⁴; requiring an alternative TTY solution could render our network incompatible with that of NDNC and could not be accomplished in the relatively short period of time that NDNC has said it will take to implement its new wireless switch. Clearly, such an action would be financially prohibitive and economically wasteful. At the time NDNC purchased its switch, it did not envision that Nortel would discontinue its support of the technology a few short years later.

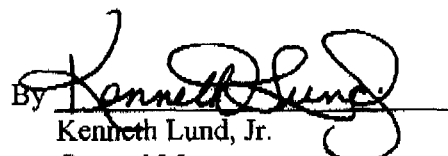
¹⁴ *Supra* Note 3.

III. CONCLUSION

In light of the foregoing, the Alliance submits that it has met the Commission's standards for obtaining the requested limited waiver of the TTY implementation deadline imposed by Rule Section 20.18(c). The Alliance respectfully requests that the Commission grant it a temporary waiver of Section 20.18 (c) of the Commission's Rules regarding the June 30, 2002 deadline and extend the deadline to permit the Alliance to implement its TTY solution by December 31, 2002.

Respectfully submitted,

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